

From: [Quinones, Edwin](#)
To: ["sebyp@gtlaw.com"](#); ["mdigiglia@gllaw.com"](#)
Cc: ["bdoherty@gllaw.com"](#); ["egieger@gllaw.com"](#)
Subject: RE: POTW Position Paper- USOR Site
Date: Thursday, April 5, 2018 2:26:00 PM
Attachments: [image001.png](#)

Thank you both for the follow-up. I'm still trying to get on R6 management's schedule to brief them on Mike's proposal below. I've also reached out to TCEQ attorney Courtney Sprague and left her a message.

Ed Q.

From: sebyp@gtlaw.com [<mailto:sebyp@gtlaw.com>]
Sent: Thursday, April 05, 2018 11:32 AM
To: mdigiglia@gllaw.com; Quinones, Edwin
Cc: bdoherty@gllaw.com; egieger@gllaw.com
Subject: RE: POTW Position Paper- USOR Site
[Ed- let us know if we need a call to update our earlier discussions.](#)

Paul M. Seby
Shareholder
Greenberg Traurig, LLP | 1200 17th Street, Suite 2400 | Denver, Colorado 80202
Tel 303.572.6584

From: Mike DiGiglia [<mailto:mdigiglia@gllaw.com>]
Sent: Thursday, April 05, 2018 10:28 AM
To: Quinones, Edwin; Seby, Paul (Shld-DEN-Env)
Cc: Brendan Doherty; Ernie Gieger
Subject: RE: POTW Position Paper- USOR Site
Ed,

To the extent you need a written response to your email below to cross the 't's' and dot the 'i's,' notwithstanding our subsequent conference call and follow up emails, for the record Severn Trent is interested in attending such a meeting and participating in good faith negotiations toward an in-kind settlement as proposed by the PRP Group with the qualification that we will need concurrence from both the EPA and the TCEQ that such an approach is feasible under the NPDES program. As you know and are probably in the process, we've asked you to set up a meeting with the TCEQ, EPA, the City and Severn Trent to discuss the regulatory feasibility and permitting requirements for the PRP Group's in-kind approach prior to the meeting with the PRP Group.

Thanks,
Mike

From: Quinones, Edwin [<mailto:quinones.edwin@epa.gov>]
Sent: Friday, March 23, 2018 11:38 AM
To: sebyp@gtlaw.com
Cc: Mike DiGiglia <mdigiglia@gllaw.com>; Brendan Doherty <bdoherty@gllaw.com>
Subject: RE: POTW Position Paper- USOR Site

Dear Mr. Seby,

Thank you for providing the position paper and the legal arguments surrounding the City's and Severn Trent's potential CERCLA 107(a) liability as past owner/operator of a portion of the USOR Superfund Site (200 N. Richey Street property). I understand your argument to be as follows:

- To be liable as a past owner/operator, there must be a disposal at the time of ownership/operation of a hazardous substance.
- CERCLA 107(a) adopts the definition of "disposal" as that defined under RCRA, which states

there must be a discharge, spilling, leaking, placing, etc. of a solid waste or a hazardous waste.

- Hazardous waste is a subset of solid waste and includes a solid waste or a combination of solid wastes that meets certain compositional criteria.
- RCRA's definition of "solid waste" includes garbage, refuse, sludge but specifically excludes "solid or dissolved material in domestic sewage."
- The sludge-like material found at the City's former wastewater treatment plant falls under the solid waste exclusion as a "solid or dissolved material in domestic sewage."

The points you made in favor of your argument were given serious thought and consideration and included my having conferred with Region 6 and HQ attorneys with expertise in both CERCLA and RCRA. In my opinion, however, the argument lacks merit for the reasons given below.

Firstly, there is no evidence that the sludge-like material left behind when the City shuttered the wastewater treatment plant was ever sampled or tested. Nor is there any evidence that this material was part of the day to day ~~to~~ operations of a treatment plant. In fact, the City's own deed for sale of the property includes language notifying the buyer that the property may actually contain hazardous substances.

Secondly, even if the sludge-like material could have ever been considered at one time part of a "solid or dissolved material in domestic sewage," that exclusion would only have applied during the City's operation of the wastewater treatment plant. As you correctly point out, 40 C.F.R 261.4(a)(ii) states that the exclusion applies to "[a]ny mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works for treatment." The sludge-like material left behind was no longer passing through nor was it being treated when it was abandoned and left in place at the time of sale. Further, there is no evidence it was being or had ever been treated in the interim after the treatment plant was closed and before it was sold. Simply put, it no longer fell under the solid waste exclusionary category, assuming it ever fell under the exclusion to begin with, when it was abandoned in place.

Most importantly, however, is that the above position and the arguments against liability have become moot as a result of the U.S. District Court's ruling on August 2, 2017 finding the City liable as a past owner under CERCLA. To the extent your argument was not yet made to the Court prior to its ruling, it should have been made at that time. The EPA also understands the ruling was against the City only and not against Severn Trent. However, Severn Trent is a past operator of the wastewater treatment. The EPA sees no reason why the Court would rule differently for a past operator than it would for a past owner in this instance. Although the EPA was not a party to the litigation that resulted in the August 2nd ruling, the EPA is nevertheless bound to respect it and sees no reason to intervene or challenge the decision as erroneous, assuming it would even have the authority to do so.

Notwithstanding my opinion on this matter, I believe it to be more productive to seek instead a resolution involving the EPA, the PRP Group, the City and Severn Trent that addresses response efforts remaining at the Site, specifically the 200 North Richey Street property, and the parties' CERCLA liabilities. This resolution would include at the outset a removal action of wastes remaining in any containment vessels and at the very least a remedial investigation. To that end, I propose a meeting with all parties to begin settlement talks based mainly on the proposal initially submitted by the PRP Group. I believe both the City and Severn Trent have already received the PRP Group's proposal in writing.

EPA Region 6 management sees no objection to proceeding with settlement talks concerning most

of what the proposal includes. However, as stated above, any sampling as initially proposed must include sampling equivalent to that of a remedial investigation.

Mr. DiGiglia has proposed to me that any discussions amongst the parties should first focus on sampling. If I understand Mr. DiGiglia's request, his client is not ready at the moment to discuss the proposal at large without first discussing sampling parameters.

I've noted, however, that one of the main components of the PRP Group's proposal includes a sampling effort (which the EPA insists must be equivalent to that of a remedial investigation). Given that sampling is a major component of the proposal, EPA sees no reason to bifurcate, if you will, or limit discussions only to issues concerning sampling. As such, I invite you and Severn Trent to attend a meeting that would also include a technical representative from each to participate in settlement discussions of an Administrative Order on Consent to perform a removal action and a remedial investigation at the 200 North Richey Street property.

I understand we have a conference call scheduled for this coming Tuesday, March 27. We can discuss this further at that time if you'd like. Otherwise, please let me know within 14 days if the City and Severn Trent would be interested in attending such a meeting and participating in good faith negotiations toward such a settlement.

Sincerely,

Ed Quinones

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US EPA Region 6

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From: sebyp@gtlaw.com [<mailto:sebyp@gtlaw.com>]

Sent: Tuesday, December 05, 2017 11:50 AM

To: Quinones, Edwin <quinones.edwin@epa.gov>

Cc: mdigiglia@gllaw.com; bdoherty@gllaw.com

Subject: POTW Position Paper- USOR Site

Greetings Ed-

Following up on our conversation, attached is the position paper we discussed.

The City of Pasadena and Severn Trent Environmental Services would appreciate EPA's prompt review and consideration of these issues. After you have had an opportunity to review and consider the attached, please let us know if we can arrange a time to visit- on both the paper and the points in your email yesterday.

Thanks

Paul M. Seby

Shareholder

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